

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TOMMY LEE PENDLEY

COMPLAINANT

VS.

LOGAN TELEPHONE COOPERATIVE, INC.

AND

SOUTH CENTRAL BELL TELEPHONE COMPANY

DEFENDANTS

CASE NO. 93-430

O R D E R

This matter arising upon petition of BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company ("South Central Bell"), filed November 28, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of its response to Item 2(a)(1) of the Commission's Order dated September 21, 1994, on the grounds that the responses contain information of a personal nature whose disclosure would constitute an unwarranted invasion of personal privacy and upon the additional grounds that disclosure of the information is likely to cause South Central Bell competitive injury, and it appearing to this Commission as follows:

By Order dated September 21, 1994, the Commission directed South Central Bell to furnish certain information relevant to these proceedings. Item 2(a)(1) of the Order requested a list of the

customers served by South Central Bell in certain exchanges. South Central Bell has petitioned that its response to this request be protected as confidential.

The information sought to be protected is not known outside of South Central Bell and is not disseminated within South Central Bell except to those employees who have a legitimate business need to know and act upon the information. South Central Bell seeks to preserve and protect the confidentiality of the information through all appropriate means.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempt by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 11 categories of information. One category exempted by paragraph (a) of that section is "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." This provision is intended to protect from public disclosure any information contained in public records that relates to the details of an individual's private life when the individual's privacy interest in the information outweighs the public's interest in the information. Board of Education of Fayette County vs. Lexington-Fayette Urban County Human Rights Commission, Ky. App., 625 S.W. 2d, 109, 111 (1981). Under the circumstances of this case the information identifying individual persons by name qualifies for protection under this exemption.

However, the exemption does not extend to corporations identified by the response.

Ordinarily, the names and addresses of telephone company customers are not entitled to protection because they are readily available from other public sources, most notably telephone directories. In this case, however, the information, when viewed in conjunction with responses to other data requests from the same Order, would provide a description of the telephone service each customer receives and the amount each pays for those services. With respect to those individuals listed in the response, the disclosure of such information would constitute an invasion of their personal privacy and the information should be protected as confidential.

The exemption for personal privacy does not extend to corporations. In Maysville Transit Company vs. Ort, 296 Ky. 524, 177, S.W. 2d 369, 370 (1943), the court, in commenting upon the right of privacy, noted that in "the right is designed primarily to protect the feelings and sensibilities of human beings, rather than to safeguard property, business or other pecuniary interests." Thus, corporations cannot claim a right of privacy and KRS 61.878(1)(a) cannot be used to protect their identity. Therefore, the names and addresses of the corporations listed in the response cannot be protected on those grounds.

However, in addition to the exemption provided by KRS 61.878(1)(a), South Central Bell also seeks to protect the identity of its customers under the provisions of KRS 61.878(1)(c). That

paragraph of the section exempts information confidentially filed with a public agency which if publicly disclosed is likely to cause competitive injury to the party from whom the information was obtained. Corporations as well as individuals can avail themselves of this exemption. To qualify for the exemption the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is publicly disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The customer list sought to be protected by South Central Bell, if publically disclosed, would not only provide a list of the company's customers in certain exchanges, but in conjunction with other information provided in response to other items, would also enable competitors of South Central Bell to determine individual customers needs and preferences. Competitors could use this information to market similar competitive products and services to those customers. Thus, disclosure of the information is likely to cause South Central Bell competitive injury and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that the petition to protect as confidential, South Central Bell's responses to Item 2(a)(1) of the Commission's Order dated September 21, 1994, which South Central Bell has petitioned to be protected from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

Done at Frankfort, Kentucky, this

21st day of December, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director